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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America,

Plaintiff

v.

Barry Addison Gray,

Defendant

Case No.: 2:95-cr-00324-JAD

**Order Denying Emergency Motion for
Compassionate Release and Granting
Government's Motion for Leave to File
Medical Records Under Seal**

[ECF Nos. 64, 68]

Counseled inmate Barry Addison Gray moves for compassionate release because of his earlier COVID-19 infection and its long-term effects.¹ In conjunction with its response to Gray's compassionate-release motion, the government provides an exhibit containing Gray's medical records and moves to seal that exhibit.² The government has shown that good cause exists to seal those records because they contain Gray's confidential medical information, so I grant it that relief. But because Gray appears to have discharged his sentence imposed by this court and is currently incarcerated under a sentence imposed by the U.S. District Court for the Northern District of Alabama, this court lacks jurisdiction to consider his compassionate-release motion. So I deny the motion without prejudice to Gray's ability to file it in the Northern District of Alabama.

¹ ECF Nos. 64 (Gray's emergency motion), 65 (Gray's attorney's notice of non-supplementation).

² ECF Nos. 68 (motion to seal), 69 (medical records to be sealed).

Discussion

Gray moves for compassionate release under 18 U.S.C. § 3582(c), which governs the modification of an imposed term of imprisonment.³ The statute suggests, and courts have reasonably interpreted 18 U.S.C. § 3582(c) to mean, that only the sentencing court can address a motion for compassionate release.⁴ And it seems logical that the only court that can grant compassionate release from the sentence that an inmate is serving is the one that imposed that sentence.

It appears that Gray's sentencing court is not this one, but rather the Northern District of Alabama. This court's records show that Gray was sentenced on May 7, 1996, to serve a 235-month (19 years, 7 months) sentence.⁵ The Northern District of Alabama's records show that, the next year, it sentenced Gray on May 22, 1997, to serve yet another 235-month sentence to run consecutive to his sentence from this court.⁶ Because Gray's sentencing occurred more than

³ ECF No. 64.

⁴ See *United States v. Raia*, 954 F.3d 594, 596 (3d Cir. 2020) (holding that the court of appeals lacked the authority to decide the inmate's compassionate-release motion because 18 U.S.C. § 3582 requires those motions to be addressed to the sentencing court); *United States v. Smith*, 896 F.3d 466, 473 (D.C. Cir. 2018) (the sentencing court considers the factors in 18 U.S.C § 3553(a) and decides whether to grant a sentence reduction); *United States v. Richardson*, 948 F.3d 733, 749 (6th Cir. 2020) (interpreting 18 U.S.C. § 3582(c) to apply to sentencing courts). See also *United States v. Ono*, 72 F.3d 101, 102 (9th Cir. 1995) (discussing sentencing court's ability to modify sentence under 18 U.S.C. § 3582(c)(2)).

⁵ ECF No. 22 at 4.

⁶ *United States v. Gray*, 5:96-00049 (N.D. Ala.) (docket sheet). These facts constitute undisputed matters of public record and I take judicial notice of them. Federal Rule of Evidence 201 permits a court to take judicial notice of an "adjudicative fact" that is "not subject to reasonable dispute" because it "(1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(1)–(2). A court may take judicial notice of its own records in other cases, *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980), and of "court filings and other matters of public record." *In re Icenhower*, 755 F.3d 1130, 1142 (9th Cir. 2014).

235 months ago, it occurred to me that he may have satisfied his sentence from this district, leaving only his Northern District of Alabama sentence, so I obtained further information about the status of Gray's sentences from the Bureau of Prisons (BOP). The BOP's sentence-computation data confirms that Gray has served almost 26 years in BOP custody.⁷ He has long since completed the 19-year, 7-month sentence this court imposed and is well into serving his consecutive sentence handed down by the Northern District of Alabama.⁸ This means that the sentence that Gray is now serving is the one from the Northern District of Alabama, and this court no longer has jurisdiction to consider his compassionate-release request because there is no sentence from this court left to modify. Gray's motion should be filed instead in the Northern District of Alabama.⁹

Conclusion

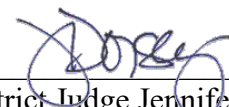
IT IS THEREFORE ORDERED that Gray's motion for compassionate release [ECF No. 64] is **DENIED without prejudice** to his ability to refile that motion in the U.S. District Court for the Northern District of Alabama. The Clerk of Court is directed to **mail** a copy of this order to Gray, along with a copy of his motion [ECF No. 64].

⁷ Exhibit 1 at 4 (redacted by the court for confidential information).

⁸ These facts are not disputed and can be accurately and readily determined from the BOP's records. The BOP's records on this topic cannot be reasonably disputed because it is the agency, through the United States Attorney General, that is tasked with administering sentences imposed by federal district courts. 18 U.S.C. § 3621(a). So I also take judicial notice of the BOP's computation of Gray's sentence and the fact that Gray has expired the sentence imposed on him by the District of Nevada.

⁹ See, e.g., *U.S. v. Dickinson*, 2021 WL 4147823, *2 (S.D. Ohio, Sept. 13, 2021) ("As Defendant's sentence to this Court has already been satisfied, and indeed was fully satisfied before [his] motion for compassionate release was ripe for decision, this Court has no jurisdiction to grant compassionate release.").

1 IT IS FURTHER ORDERED that the government's motion to seal medical records that it
2 submitted in support of its response to Gray's compassionate-release motion [ECF No. 68] is
3 **GRANTED.** The Clerk of Court is directed to **maintain the seal on ECF No. 69.**

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6 U.S. District Judge Jennifer A. Dorsey
7 October 6, 2021
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PHXC4	*	PUBLIC INFORMATION	*	08-31-2021
PAGE 002	*	INMATE DATA	*	06:58:40
		AS OF 08-31-2021		

REGNO.: 30812-04P NAME: GRAY, BARRY ADDISON

Redacted

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: NEVADA
 DOCKET NUMBER.....: 2:95CR00324-001
 JUDGE.....: PRO
 DATE SENTENCED/PROBATION IMPOSED: 05-07-1996
 DATE COMMITTED.....: 06-10-1996
 HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
 PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$50.00	\$00.00	\$5,000.00	\$00.00

RESTITUTION...:	PROPERTY: NO	SERVICES: NO	AMOUNT: \$00.00
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-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE.....: 554 18:2113(D) ROBBERY, ASSLT, BANK
 OFF/CHG: BANK ROBBERY WITH A WEAPON - 18 USC 2113(A) AND (D)

SENTENCE PROCEDURE.....: 3559 VCCLEA VIOLENT SENTENCE
 SENTENCE IMPOSED/TIME TO SERVE.: 235 MONTHS
 TERM OF SUPERVISION.....: 5 YEARS
 CLASS OF OFFENSE.....: CLASS B FELONY
 DATE OF OFFENSE.....: 11-27-1995

-----CURRENT JUDGMENT/WARRANT NO: 020 -----

COURT OF JURISDICTION.....: ALABAMA, NORTHERN DISTRICT
 DOCKET NUMBER.....: CR-96-S-49-NE
 JUDGE.....: SMITH
 DATE SENTENCED/PROBATION IMPOSED: 05-22-1997
 DATE COMMITTED.....: 05-22-1997
 HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
 PROBATION IMPOSED.....: NO

FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
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G0002 MORE PAGES TO FOLLOW . . .

PHXC4	*	PUBLIC INFORMATION	*	08-31-2021
PAGE 003	*	INMATE DATA	*	06:58:40
		AS OF 08-31-2021		

REGNO...: 30812-048 NAME: GRAY, BARRY ADDISON

Redacted

-----CURRENT OBLIGATION NO: 010 -----
OFFENSE CODE....: 554 18:2113(D) ROBBERY,ASSLT,BANK
OFF/CHG: 18 USC 2113(A) AND (D), 18 USC 2 - BANK ROBBERY WITH A FIREARM
AIDING AND ABETTING

SENTENCE PROCEDURE.....: 3559 VCCLEA VIOLENT SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 235 MONTHS
TERM OF SUPERVISION.....: 36 MONTHS
CLASS OF OFFENSE.....: CLASS B FELONY
RELATIONSHIP OF THIS OBLIGATION
TO OTHERS FOR THE OFFENDER.....: CS TO 010, 010
DATE OF OFFENSE.....: 10-31-1995

-----CURRENT COMPUTATION NO: 010 -----
COMPUTATION 010 WAS LAST UPDATED ON 03-24-2020 AT DSC AUTOMATICALLY
COMPUTATION CERTIFIED ON 01-02-2009 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 010: 010 010, 020 010

G0002 MORE PAGES TO FOLLOW . . .

PHXC4 *
PAGE 004 OF 004 *

PUBLIC INFORMATION
INMATE DATA
AS OF 08-31-2021

* 08-31-2021
* 06:58:40

REGNO...: 30812-048 NAME: GRAY, BARRY ADDISON

Redacted

DATE COMPUTATION BEGAN.....: 05-07-1996
AGGREGATED SENTENCE PROCEDURE...: AGGREGATE GROUP 800 VCCLEA VIOLENT
TOTAL TERM IN EFFECT.....: 470 MONTHS
TOTAL TERM IN EFFECT CONVERTED...: 39 YEARS 2 MONTHS
AGGREGATED TERM OF SUPERVISION...: 5 YEARS
EARLIEST DATE OF OFFENSE.....: 10-31-1995

JAIL CREDIT.....: FROM DATE THRU DATE
11-27-1995 05-06-1996

Redacted

TIME SERVED.....: 25 YEARS 9 MONTHS 5 DAYS

Redacted

S0055 NO PRIOR SENTENCE DATA EXISTS FOR THIS INMATE